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UNITED STATES DISTRICT COURT
DISTRICT OF WYOMING

United States of America,

Plaintiff,

v.

Civil No. 2:07-cv-19-CAB

Jane Joyce Rice, *et al.*,

Defendants.

**PLAINTIFF UNITED STATES' RESPONSE TO DEFENDANT
JANE JOYCE RICE'S MOTION TO SET ASIDE ENTRY OF DEFAULT**

The United States of America, by its undersigned counsel, hereby
responds to Defendant Jane Joyce Rice's ("Jane Rice's") "Motion to Strike

Plaintiff's Motion for Entry of Default and to Vacate, Set Aside, and Void Clerk's Entry of Default," filed on December 13, 2007, Doc. # 52 (the "Motion").

In the Motion, Jane Rice argues that on June 28, 2007, she filed her "Objection to and Motion to Reconsider the Denial of Amended Motion to Quash and for Findings of Fact and to Certify for Appeal Pursuant to 28 U.S.C. 1292(b)," Doc. # 29 (the "Objection"), "in lieu of a responsive pleading."¹ See Motion at 2. However, Jane Rice cites no authority suggesting that the Objection was an acceptable surrogate for a responsive pleading. In fact, just the opposite is true. 28 U.S.C. § 1292(b) explicitly provides that "application for an appeal hereunder shall not stay proceedings in the district court unless the district judge or the Court of Appeals or a judge thereof shall so order." Thus, in the absence of a contrary order from the Court or the Court of Appeals, Jane Rice is obligated to continue participating in this lawsuit regardless of her Objection. And, under Fed. R. Civ. P. 12(a)(4)(A), Jane Rice was obligated to file a responsive pleading no later than June 29, 2007, because her Rule 12 motion was denied on March 20, 2007. Since she failed to do so, entry of default was proper. Nevertheless, if Jane

¹ In the Motion, Jane Rice also argues that the United States "confessed to the merits" of the Objection by failing to oppose it. See Motion at 2. In fact, the United States did file and serve an Opposition to the Objection on July 9, 2007. See United States' Opposition to Defendant Jane Joyce Rice's Motion for Certification of Issue for Interlocutory Appeal, and attached Certificate of Service, filed on July 9, 2007, Doc. # 31. Thus, Jane Rice's argument that the United States has consented to the relief requested in the Objection is baseless.

Rice would cure her default by simply filing a response to the Complaint, the United States would not oppose the primary relief requested in the Motion – the setting aside of the entry of default.

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Dated: December 20, 2007

s/ Michael G. Pitman
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